

University of Washington School of Law
UW Law Digital Commons

King County Superior Court Documents

School Finance Litigation: McCleary v. State of
Washington

9-3-2009

**Reporter's Verbatim Report of Proceedings, Thursday, September
3, 2009, Volume IV--Sessions 2 and 3 of 4 [Pages 804-912]
07-2-02323-2**

Follow this and additional works at: <https://digitalcommons.law.uw.edu/king>

Recommended Citation

"Reporter's Verbatim Report of Proceedings, Thursday, September 3, 2009, Volume IV--Sessions 2 and 3 of 4 [Pages 804-912]" 07-2-02323-2. *King County Superior Court Documents*. 301.
<https://digitalcommons.law.uw.edu/king/301>

This Transcript is brought to you for free and open access by the School Finance Litigation: McCleary v. State of Washington at UW Law Digital Commons. It has been accepted for inclusion in King County Superior Court Documents by an authorized administrator of UW Law Digital Commons. For more information, please contact cnyberg@uw.edu.

1 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
 2 IN AND FOR KING COUNTY

3 _____
 4 MATHEW and STEPHANIE McCLEARY,)
 on their own behalf and on)
 5 behalf of KELSEY and CARTER)
 McCLEARY, their two children in)
 6 Washington's public schools;) SUPREME COURT OF WA
 ROBERT and PATTY VENEMA, on their) No. 84362-7
 7 own behalf and on behalf of HALIE)
 and ROBBIE VENEMA, their two)
 8 children in Washington's)
 public schools; and NETWORK)
 9 FOR EXCELLENCE IN WASHINGTON)
 SCHOOLS ("NEWS"), a state-wide)
 10 coalition of community groups,)
 public school districts, and)
 11 education organizations,)
)
 12 Petitioners,) KING COUNTY CAUSE
) No. 07-2-02323-2 SEA
 13 vs.)
)
 14 STATE OF WASHINGTON,)
)
 15 Respondent.)

16 _____
 17 REPORTER'S VERBATIM REPORT OF PROCEEDINGS

18 --oOo--

19 THURSDAY, SEPTEMBER 3, 2009
 VOLUME IV - Sessions 2 and 3 of 4

20 --oOo--

21

22 Heard before the Honorable John P. Erlick, at King
 23 County Courthouse, 516 Third Avenue, Room W-1060,
 24 Seattle, Washington.

25 --oOo--

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

CYNTHIA A. KENNEDY, RPR
CSR No. 3005
Official Court Reporter
King County Superior Court
516 Third Avenue, C912
Seattle, Washington 98104

(206) 296-9188

A P P E A R A N C E S:

--oOo--

THOMAS F. AHEARNE, CHRISTOPHER G. EMCH, and EDMUND W.
ROBB, Attorneys at Law, appearing on behalf of the
Petitioners;

WILLIAM G. CLARK and CARRIE L. BASHAW, Assistant
Attorney Generals, appearing on behalf of the
Respondent.

--oOo--

1 CHRONOLOGICAL INDEX

2 --oOo--

3

4 THURSDAY, SEPTEMBER 3, 2009 - Morning Session (Resumed)

5 KENNETH EMMIL (Resumed)

6 Cross (Resumed) by Ms. Bashaw 809

7 Noon recess 859

8 AFTERNOON SESSION

9 Cross (Resumed) by Ms. Bashaw 860

Redirect by Mr. Ahearne 867

10 Examination by the Court 891

Recross by Ms. Bashaw 905

11 Examination by the Court 906

12 Recess - change in court reporters 912

13

14 --oOo--

15

16

17

18

19

20

21

22

23

24

25

1 EXHIBIT INDEX

2 --oOo--

3

4 EXHIBIT ADMITTED

5 179 810

6 180 810

7 181 810

8 1214 829

9 1217 825

10 1225 843

11 1227 860

12 1228 864

13

14 --oOo--

15

16

17

18

19

20

21

22

23

24

25

1 SEATTLE, WASHINGTON

2 THURSDAY, SEPTEMBER 3, 2009

3 MORNING SESSION - 10:45 A.M.

4 --oOo--

5 MS. BASHAW: It turns out my binder is really
6 close. I'm going to have Mr. Emmil look at Exhibits
7 179 and 180.

8 BY MS. BASHAW:

9 Q. Mr. Emmil, showing you what's been previously
10 marked as Exhibit 179 and 180.

11 Do you recognize those?

12 A. This looks similar to the report card that I
13 looked at in the other one, but --

14 Q. Okay. Do you notice it also says for the
15 '07-'08?

16 A. '07-'08?

17 Q. If you look at 689 tab five was for the
18 '08-'09 period?

19 A. Okay. This is '07-'08. Okay.

20 Q. And then Exhibit 180, that's for the '03-'04
21 period, right -- or, excuse me --

22 A. Uh-huh.

23 Q. -- '06-'07 period?

24 A. Uh-huh.

25 THE COURT: You have to answer yes --

1 THE WITNESS: Oh, yes, I'm sorry.

2 THE COURT: -- for the court reporter and the
3 record.

4 THE WITNESS: Yes.

5 BY MS. BASHAW:

6 Q. Then Exhibit 181 is for the '03-'04 period.

7 A. Yes.

8 MS. BASHAW: Your Honor, we would offer
9 Exhibits 179, 180, and 181.

10 THE COURT: 179, 180, and 181 are offered.

11 MR. EMCH: No objection, Your Honor.

12 THE COURT: 179, 180, and 181 are admitted.

13 EXHIBITS ADMITTED

14 BY MS. BASHAW:

15 Q. And so, Mr. Emmil, on Exhibit 179 for that
16 previous year, again, the information on the right-hand
17 side is information the district provided to OSPI.

18 A. Yes.

19 Q. And on the second page under the financial
20 data column --

21 A. Yes.

22 Q. -- it identifies the revenues and
23 expenditures per student for the '06-'07 period, right?

24 A. Yes.

25 Q. All right. And in that period, the district

1 receives revenues in the amount of \$7,492. It's in the
2 black -- kind of black with white print.

3 A. 492 at the top. Okay.

4 Q. Then going down to the total expenditure, the
5 district spent \$7,630, right?

6 A. Yes.

7 Q. All right. And of the revenues, it looks
8 like for that period of time, local revenues were only
9 four percent.

10 A. Yes.

11 Q. And the state provided 74 percent of your
12 revenues, right?

13 A. Yes.

14 Q. And the feds provided nine percent, and then
15 you had three percent in other, right?

16 A. Three percent in other, yes.

17 Q. So in Exhibit 180 on the second page, looking
18 at the financial data column, again, we see similar
19 numbers per student, 7,849 per student, the state
20 during the '05-'06 period provided 80 percent of your
21 revenues, and then nine percent for federal, nine
22 percent for local, and two percent for other, right?

23 A. Yes.

24 Q. And you had total expenditures of \$7,593 per
25 student, right?

1 A. That's what it says, yes.

2 Q. Then if we look at Exhibit 181, for that
3 period of time, the financial data wasn't included on
4 the report card, right?

5 A. I don't see financial data on there, no.

6 Q. So while we're on these report cards, the
7 WASL scores on the left-hand side, if you were to look
8 at Exhibit 689 for your '08-'09 period --

9 A. Uh-huh.

10 Q. -- and Exhibit 179, 180, 181, I notice a lot
11 of variability in the WASL scores that can occur from
12 year to year.

13 A. Variability can occur, yes.

14 Q. And there are lots of reasons for that
15 variability, isn't there?

16 A. There are lots of reasons, less and less
17 every year as it becomes refined, yep.

18 Q. And one of the reasons that it might be
19 variable is because some kids might not take the test
20 seriously.

21 A. That's possible.

22 Q. And some of the other reasons is because
23 you're testing a totally different group of students
24 from year to your, right?

25 A. Sure.

1 Q. And so there's more things that can cause
2 variation, do you agree, in those WASL scores than just
3 simply funding?

4 A. Is there more things that can -- make that
5 variable than just money?

6 Q. Right.

7 A. Well, you'd have to see how many of those
8 variables you could fix with money before you could
9 really answer that, so I can't answer that.

10 Q. Now, when you talked about how you didn't
11 have enough money to do all the things that Mr. Ahearne
12 ran you through, the list of various exhibits, right?

13 A. Yes.

14 Q. Now, you've never calculated what this figure
15 is that would allow you to provide all the things that
16 you say you want to provide to all students, right?
17 You've never calculated that?

18 A. I have not calculated that, no.

19 Q. You don't know what the actual cost to do all
20 of this?

21 A. I have no idea what the actual costs would
22 be, no.

23 Q. Haven't taken the time to do that?

24 A. Well, frankly, ma'am, this morning I was
25 cutting other programs so I could afford kindergarten.

1 I don't have the time the way our state does to do
2 study, after study, after study and spend millions of
3 dollars to figure out how much it costs to do that. I
4 think enough studies have been done. I don't know that
5 I need to do a study.

6 Q. So we don't need another study.

7 A. I don't need to do another study. No, I have
8 a job.

9 Q. Let's talk about this morning and the
10 kindergarten kids.

11 A. Okay.

12 Q. Now, you do get state apportionment for those
13 six kids who now are trying to get into a class, right?

14 A. No, I get state apportionment for three of
15 those six kids.

16 Q. Three?

17 A. Yes.

18 Q. But you're having six that are trying to
19 enroll, so doesn't that affect your funding formula?

20 A. Yes, the state funds every kindergartner at
21 half a student. They don't fund the full
22 kindergartner.

23 Q. All right.

24 A. They fund a kindergartner as half a student,
25 so, yes, I get funding. I will get funding for three

1 of those six students but not for all six, no.

2 Q. So you're still providing all-day
3 kindergarten.

4 A. Yes, that's been the priority for my school
5 board.

6 Q. And the students that go into your all-day
7 kindergarten, those who are on free and reduced priced
8 lunch do not have to pay any sort of tuition to have
9 all-day kindergarten; isn't that right?

10 A. The law prohibits me from excluding
11 disadvantaged students from having the same exact
12 opportunity for education that more advantaged -- I
13 guess the kids who have money get, yes.

14 Q. And you've been providing all-day
15 kindergarten without a tuition for some time now; isn't
16 that true?

17 A. It's off and on, hit and miss depending on
18 the levy. But --

19 Q. Last year you provided all-day kindergarten
20 for all those students without charging a tuition.

21 A. Right. I used 728 money to do it.

22 Q. And the year before that, you did that as
23 well.

24 A. The year before, half of the year was 728 and
25 half of the year was tuition.

1 Q. And so are you saying that into the next
2 period for this year, you're charging tuition for
3 all-day kindergarten?

4 A. No.

5 Q. Are any of these six students special ed
6 students or learning assistance students?

7 A. Well, I don't know if you can say any of the
8 six students. I don't know. I haven't -- I wasn't
9 there yesterday for enrollment, so I don't know if any
10 of the students who enrolled yesterday were special ed
11 or disadvantaged, but I know that within the group of
12 students who are enrolled in kindergarten, there are
13 six students who are special ed and disadvantaged.

14 Q. You don't know yet about the six who showed
15 up yesterday to enroll.

16 A. The new six, no, I have no idea.

17 Q. But if they are, then you get additional
18 money for those children from the Special Education
19 Fund as well as the Learning Assistance Program if they
20 meet those criteria as well?

21 A. I will get -- I would get additional
22 funding. But, as well, one of them could be paraplegic
23 and need a full-time person with them every day all
24 day. So I don't -- I don't know.

25 Q. All right. So for those --

1 A. It could end up --

2 Q. -- kinds of kids --

3 A. It could end up working out. It could end up
4 not working out.

5 MR. AHEARNE: Your Honor, can the attorney
6 let the witness answer the question, please?

7 THE COURT: Again, we need to have the
8 witness complete his answer before you move on to the
9 next question, and by the same token, please let
10 counsel finish her question. It's for the sake of our
11 record and for our court reporter.

12 THE WITNESS: Okay.

13 THE COURT: Thank you.

14 MS. BASHAW: Thank you, Your Honor.

15 BY MS. BASHAW:

16 Q. So for those kids who have higher needs, you
17 can apply for safety net funds.

18 A. You could apply for safety net funds,
19 absolutely. Has anybody applied for Safety Net Funds
20 here? It is an unbelievably horrendous task that takes
21 more time from your staff than what you get. It's a --
22 it's not worth the dollars to apply for Safety Net
23 Funds. You spend more getting what you get.

24 Q. So let's talk about some of the programs you
25 are able to offer at your school.

1 We'll look at these nice pictures
2 again.

3 A. Okay.

4 THE COURT: Exhibit, please, counsel?

5 MS. BASHAW: 1618.

6 THE COURT: Thank you.

7 BY MS. BASHAW:

8 Q. So looking at Exhibit 1618 and the last two
9 digits down there in the right-hand column at the
10 bottom 67.

11 A. Yes.

12 Q. Do you recall providing testimony about this
13 exhibit yesterday?

14 A. Yeah -- yes.

15 Q. And this is, as I understand it, the metal
16 art that is above the Colville High School sign there
17 was created by one of your students, right?

18 A. Right.

19 Q. Was this one of the students while he was a
20 student or after he became a student -- I mean after he
21 left?

22 A. This was while he was a student. This
23 was this student's senior project.

24 Q. And I believe that you told us how each of
25 these things that are identified up there, respect

1 citizenship, responsibility, trustworthiness, fairness,
2 and caring, what all of those things meant.

3 Do you remember testifying about this
4 yesterday?

5 A. To me. What they mean to me, yes.

6 Q. And what they mean to you is also what you're
7 trying to instill in the children that go to this
8 school, right?

9 A. Yes.

10 Q. And to all of the children, not just the
11 victorious honor athletes, right?

12 A. Not just the victorious honors, yeah. Not
13 just athletes, but for all students and staff. Yes.

14 Q. So these terms, do you think -- well, let
15 me -- the trustworthiness -- the trustworthiness -- I'm
16 sorry. I'm on the wrong page.

17 What you try to teach your students is
18 to develop a mutual trust with their fellow student
19 neighbors, with adults, and with others, right? I
20 mean, that's part of what you're trying to teach your
21 students?

22 A. I don't know if that's the words I used
23 yesterday, but that would be great.

24 Q. And do any of those words also encompass
25 trying to teach your students about how to effectively

1 talk and relate to their peers and others?

2 A. Do you mean communication skills?

3 Q. Right.

4 A. I think communication skills are imbedded in
5 all of those.

6 Q. All right. And imbedded within all of these
7 terms, and what you're doing in the Colville School
8 District, are you also teaching students about how to
9 work together?

10 A. Teamwork? Sure.

11 Q. Teamwork with their peers whether they're in
12 sports or not.

13 A. Well, teamwork isn't limited to sports.

14 Q. Right. And, are you also, with these
15 principles and the work that you're doing in the school
16 district, teaching your students to respect, equality,
17 and equal justice for all of the students?

18 A. Absolutely, yes.

19 Q. And to respect each other even when they
20 disagree, when they have civil discourse. These terms
21 are also teaching your students those principles.

22 A. Can you say that again? I'm not sure if I --

23 Q. Sure. Well, when people have
24 disagreements --

25 A. Yeah.

1 Q. -- we hope that we can talk to each other
2 respectfully and --

3 A. Sure.

4 Q. -- have civil discourse in a respectful
5 manner, right?

6 A. Yes.

7 Q. And these principles that you teach at
8 Colville School District, would encompass that as well,
9 would it not?

10 A. Right. I know we're using this exhibit but I
11 don't know that it's limited to this. I think that's
12 something we try to do in everything, so --

13 Q. All right. Sure. So in everything that you
14 try and do, including these principles, you also try
15 and teach your students to have respect for group
16 differences?

17 A. Yes.

18 Q. And you also are trying to teach your
19 students to have an open mind and want to inquire and
20 learn about group differences and other people in other
21 cultures, right?

22 A. Well, I think that the best time to answer a
23 question for a student is when they ask it, not -- I
24 don't think you put questions in kids' heads
25 necessarily, but when they ask you a question, it needs

1 it be answered then.

2 Q. So then initiating questions is having
3 inquiring minds, right?

4 A. Right.

5 Q. And that's one of the things that you're
6 trying to instill in the students?

7 A. Sure, yes.

8 Q. Using these principals here on page 67 of
9 Exhibit 1618 and everything else that you do.

10 A. And other stuff.

11 Q. And you're also trying to teach your students
12 to know their rights. And that's encompassing these
13 principles, right?

14 A. I think that would be part of respecting
15 yourself and others.

16 Q. And are you also teaching in the Colville
17 School District the value of freedom?

18 A. You know, I don't know -- I don't know
19 that -- I don't know that that's the case. I don't
20 know that. I mean, I don't know --

21 Q. You teach social studies.

22 A. Oh, yeah, absolutely. Yeah.

23 Q. Wouldn't the concept of freedom be taught in
24 social studies?

25 A. Sure. I think it's taken for granted, but we

1 could probably do a better job of that.

2 Q. And you teach your students -- I mean, I
3 think you talked about some of the other programs that
4 you've had at Colville district. I think I recall you
5 saying that you had horticulture programs for your
6 students, right?

7 A. Right. So it would be floriculture, but --

8 Q. Floriculture?

9 A. It's flowers, right.

10 Q. You have Future Farmers of America?

11 A. Yes.

12 Q. Okay.

13 A. It's a club.

14 Q. Do you have any other kind of environmental
15 programs for the students at Colville?

16 A. Well, we have a group that's starting a food
17 to flowers deal with the lunch program so that, you
18 know, when they're done with the lunch, they can take
19 those and separate out the stuff. We can start a
20 compost kind of deal and --

21 Q. So a recycling program.

22 A. Right.

23 Q. Rather than damaging the environment by
24 throwing stuff away. You just pollute, right?

25 A. Right.

1 Q. And so you're teaching -- through that,
2 you're teaching your kids in Colville School District
3 the importance of taking care of our environment.

4 A. I think it happens. I think it happens.
5 There's not a specific curriculum that's set for that,
6 but I think it happens through other courses.

7 Q. We'll, looking at Exhibit 1227.

8 A. Is that it for this one?

9 Q. Nope. Wrong one. Sorry.

10 A. Ma'am, is that it for this one?

11 Q. Yes.

12 A. Thank you. Okay.

13 Q. 1217. Same binder.

14 A. Thank you. 1217?

15 Q. Right.

16 A. Okay. I tried to have this removed, you
17 know, but they said no.

18 Q. We'll wait until his Honor gets the right
19 binder.

20 A. Okay.

21 MS. BASHAW: May I proceed, Your Honor?

22 THE COURT: You may.

23 MS. BASHAW: Thank you.

24 BY MS. BASHAW:

25 Q. So, Mr. Emmil, looking at Exhibit 1217, do

1 you recognize that?

2 A. Yes.

3 Q. And that's actually you in the Batman suit on
4 the first page there?

5 A. In the big Batman suit, yeah. That's my
6 elementary principal in the Robin suit, a couple kids
7 who dressed up as Batman and Robin.

8 Q. And what function was this for?

9 A. We have an annual parade around the
10 elementary school. Kids dress up in their Halloween
11 stuff and parade around the school.

12 MS. BASHAW: Your Honor, respondents would
13 offer Exhibit 1217.

14 THE COURT: Any objection?

15 MR. EMCH: No objection, Your Honor.

16 THE COURT: 1217 is admitted.

17 EXHIBIT ADMITTED

18 BY MS. BASHAW:

19 Q. So Exhibit 1217 is actually a message that
20 you wrote that's on the Colville School District
21 website?

22 A. Right, if you go to the next page.

23 Q. And I'd like to focus, if we could, on the
24 second paragraph there. Could you read that? Well,
25 are you able to read that without your glasses,

1 Mr. Emmil?

2 A. Yes, I can read that.

3 Q. All right. Could you read that for us,
4 please?

5 A. Sure.

6 Q. The second paragraph.

7 A. Sure. My vision for the school district is
8 one of service. That being said, if there's one belief
9 that I have about living and learning, it is that
10 personal ownership is the key. As adults, we must own
11 every aspect of our lives; as educators, we must help
12 our students to understand the power they have in their
13 lives if they will take ownership for their learning
14 and decision making. Every time we (they)(you) point
15 fingers elsewhere or find excuses, power's lost, given
16 over to something outside of our control. If there is
17 one thing that I (we) can give to our children is the
18 power of their own lives. Sincerely, Ken Emmil,
19 Superintendent.

20 Q. And what kind of message were you trying to
21 deliver with this -- with these words?

22 A. Well, I live in a community that is anti --
23 anti-government. It's anti-tax. I think I shared
24 that. It's stay out of, you know, my business. And I
25 think what happens with our kids is is that they get

1 this -- sometimes they get a mentality about -- you
2 know, I think this is more along the lines with what
3 you were saying before about understanding others and
4 what they're in and how they're doing. And so my
5 purpose is to try to help my community, and my kids
6 understand that they're a part of it. They're a part
7 of that.

8 Q. So this is helping to teach the principles
9 that are on the Colville High School sign and the other
10 things you just described, right?

11 A. Well, the other thing is, I think that the
12 community needs to know who I am and what I'm about,
13 and that's who I am and what I'm about.

14 Q. And let's take a look at Exhibit 1214. Do
15 you recognize Exhibit 1214?

16 A. This looks like a page from the website.

17 Q. It should be several pages from the
18 Colville --

19 A. Yeah, I was just looking at the front page.
20 okay.

21 Q. And Exhibit 1214, that lays out each of the
22 actual school names on all those various pages, right,
23 you testified about yesterday?

24 A. Across the top it names those, yes.

25 Q. Okay. So, like, on the second page is a

1 reference there to Aster.

2 A. Right.

3 Q. Now, you're actually not having any students
4 in Aster anymore, correct?

5 A. No, that's not correct.

6 Q. That's not correct.

7 A. No. We have students in Aster.

8 Q. Is that your Columbia Virtual Academy
9 Panorama?

10 A. It's Panorama. It's called the Virtual
11 Academy, yes. A preschool.

12 Q. Preschool.

13 A. Yeah.

14 Q. But the kindergarten kids were moved over to
15 a different school?

16 A. Kindergarten moved to Hosteler, yes.

17 Q. All right. And then the third page there's a
18 reference there to Colville High School. Do you see
19 that?

20 A. Yes.

21 Q. And then a couple pages later we've got CVA,
22 the Colville -- excuse me, Columbia Virtual Academy?

23 A. Yes.

24 Q. And then a couple pages after that, we've got
25 a reference there to Fort Colville Elementary?

1 A. Yes, Fort Colville.

2 Q. And then Hosteler Elementary?

3 A. Yep. Yes.

4 Q. Looks like I may have missed a page for the
5 junior high.

6 A. Right. Junior high is not in there.

7 Q. And that is the Colville Junior High?

8 A. Uh-huh, yes.

9 MS. BASHAW: Your Honor, we would offer
10 Exhibit 1214.

11 THE COURT: Any objection to 1214?

12 MR. EMCH: No objection, Your Honor.

13 THE COURT: 1214 is admitted.

14 EXHIBIT ADMITTED

15 BY MS. BASHAW:

16 Q. Looking at -- if you look at the top right-
17 hand corner you'll see numbers up there that say RTrEX
18 1214, do you see that?

19 A. Yes.

20 Q. So turning to the page that has four as the
21 last digit, the Colville High School.

22 A. Okay.

23 Q. And it indicates that the Colville High
24 School is a 14-and-a-half million dollar facility
25 providing students with state of the art technology and

1 a beautiful education setting. Do you see that?

2 A. Uh-huh. Yes. Sorry.

3 Q. Okay. And it also describes how Colville
4 High School provides students with opportunities to get
5 the 19-credit diploma and then goes further and
6 provides 23 credits to get a diploma, right?

7 A. That's correct.

8 Q. Okay. And down at the bottom, it describes
9 that Colville High School has comprehensive
10 interscholastic athletic programs offered by well-
11 trained and enthusiastic coaches in football,
12 wrestling, basketball, baseball, girls' volleyball,
13 tennis, softball, track, cross-country, soccer, and
14 golf, right?

15 A. Correct.

16 Q. There are also numerous clubs and activities
17 ranging from the Knowledge Bowl to FFA. Right?

18 A. Yes.

19 Q. Now, you talked yesterday -- I believe you
20 said that you had the power to determine what program
21 to cut and what program not to cut in response to the
22 French teacher calling you saying he wanted French to
23 be offered as another class. Do you recall that
24 testimony?

25 A. Well, I recall the testimony but the facts

1 are not accurate.

2 Q. Okay.

3 A. I mean, the facts you're presenting are
4 not -- I don't know what to do here. I could answer
5 the question. I understand the question, I think,
6 but --

7 Q. Well, I'll find the exact quote I wrote
8 down.

9 A. I think I didn't say power. I think it was
10 the high school principal who called me, and I think it
11 was Spanish.

12 Q. I pick and choose which programs live and
13 die.

14 A. I do that.

15 Q. Okay. And that was in response to a question
16 from a principal to add French or Spanish?

17 A. The high school principal wanted me to hire a
18 Spanish teacher, yes, at the high school.

19 Q. All right. And so in making those choices,
20 that also takes into account trying to decide whether
21 you're going to have this comprehensive interscholastic
22 athletic program, right, which you said was a high
23 priority in your district?

24 A. In our community, yes.

25 Q. So perhaps higher than Spanish?

1 A. Well, it's not as simple as that. Our
2 community passes a levy and says this is what we want
3 you to fund with the levy. If you deviate from that in
4 any aspect, we won't pass the next levy, so they say we
5 want this program, this program, this program and
6 here's the levy money to pay for it, that's what you
7 pay for. So, it's not like I can, you know, cut soccer
8 to fund Spanish.

9 Q. Because of your local community?

10 A. Because of the community. Because of the --
11 how that works, yeah the community.

12 Q. Are you familiar with the term local control?

13 A. Yeah, absolutely.

14 Q. Does it have any particular meaning to you as
15 a superintendent?

16 A. Yes.

17 Q. All right. And local control means having
18 that kind of control in your community to adopt
19 programs and formulate your district based on what some
20 of the desires and needs are of your community.

21 A. Right. But it's limited to levy money.

22 Q. All right. And, in fact, I think when we
23 were looking through some pictures yesterday, you
24 identified a picture of a skate park that was not
25 really on school district property but it was something

1 that had been built by the community.

2 A. No, it is on the school property. It's
3 not -- it's a city park on school property and they
4 maintain it and run it and -- the city does.

5 Q. So this should be an example of some of this
6 shared usage, if you will, of school property that
7 becomes available for the community to use as well.

8 A. Well, frankly, it's win-win. It's property
9 that we would have to maintain in some way and now we
10 don't have the expense of maintaining it because the
11 city's put something that they need on it and they're
12 maintaining that property for us. That's the same as
13 with the baseball, softball fields, and the tennis
14 court, so, yeah.

15 Q. And I think you talked about the -- I think
16 it was the gym or an auditorium that was also something
17 that the community uses.

18 A. Right. We have an agreement with our city.
19 They use our gym when we're not using it, and we use
20 the city softball fields for our high school softball
21 program.

22 Q. And I think you said the adults in the
23 community get to use your gym after about seven o'clock
24 at night.

25 A. If it's not during basketball season, right.

1 It's their -- it's their building.

2 Q. I'm sorry?

3 A. It's their building.

4 Q. The school is their building?

5 A. Absolutely. It's the community building,
6 yeah.

7 Q. It's not the state's building, the
8 community's building.

9 A. Well, if you want to be technical, but if you
10 ask anybody in my community whose building that is,
11 they'll tell you it's their building.

12 Q. Okay. All right. So let's look at page six
13 of Exhibit 1214.

14 A. Okay.

15 Q. Tell us about the Columbia Virtual Academy.
16 What is that?

17 A. That is a couple different programs. It
18 is -- we have a lot of families in our community who
19 really value that parent's right to choose the kind of
20 education that they have. They want to be highly
21 involved in the education of their students. They want
22 to be one of the primary instructors of their
23 students. But they also understand that they have a
24 need for help from the school district to make that
25 happen. So it's a partnership with those families, and

1 their students come in and come to our school in Aster
2 and they work with our teachers and our principal up
3 there, and they work together to create an education
4 for those kids.

5 Q. So is this also the kids who are very, for
6 lack of a better word, being home schooled by their
7 parents that are coming in for additional assistance
8 from the district?

9 A. If they weren't -- if they weren't a part of
10 our program they probably would be home schooled.

11 Q. All right. And you get apportionment dollars
12 for those kids, right?

13 A. Yes.

14 Q. You get state money for these kids that come
15 in?

16 A. Absolutely. They're enrolled in our school
17 district, yes.

18 Q. How often do they come?

19 A. It's various. They come in from once a week
20 to all day every day.

21 Q. So it can vary depending on what the
22 educational desire or need is that a student has or
23 that the parent wants the child to have assistance from
24 the school district.

25 A. Well, it's based on the -- it's based on the

1 plan that's been created under Washington State law
2 about what's necessary for that plan for that student's
3 education, yes.

4 Q. And historically you've had about 150 to 175
5 students in this program, right?

6 A. Well, I don't know if you can say
7 historically. It's not really historically very old.
8 It's pretty new, so --

9 Q. Tell us when you started it.

10 A. A year or two we had 152 to 175 kids.

11 Q. Well, how long has the academy been around?

12 A. Pardon?

13 Q. How long have you had the academy?

14 A. It started out as -- started out as a
15 different name, Parent Partnership Program. It was
16 really very small. Became Columbia Virtual Academy,
17 started to grow. We have -- I guess it's been about
18 three years.

19 Q. So last year was it about 150 to 175
20 students?

21 A. No, last year was about 300 students.

22 MS. BASHAW: Publishing Mr. Emmil's
23 deposition.

24 THE COURT: The deposition of Mr. Emmil will
25 be published at this time.

1 BY MS. BASHAW:

2 Q. Mr. Emmil, if you could you turn to page 44
3 of your deposition.

4 A. I don't have it in front of me.

5 Q. Oh, I'm sorry. Actually, Mr. Emmil, before
6 you do that, do you recall having your deposition taken
7 back in May, May 14th of 2009?

8 A. I remember having my deposition. It was in
9 the spring, but I remember that, yes.

10 Q. All right. And I asked you some questions
11 and you provided answers, right?

12 A. Yes.

13 Q. And you were under oath?

14 A. Yes.

15 Q. And Mr. Emch was there?

16 A. Yes.

17 Q. So turning to page 44.

18 A. Okay. Yes.

19 Q. Actually let me back up. Columbia Virtual
20 Academy is actually a consortium of different
21 districts, right?

22 A. Yes.

23 Q. Explain that to us.

24 A. It isn't brief. Is that okay?

25 Q. As briefly as you can.

1 A. As briefly as I can. The state passed a set
2 of laws called Alternative Learning Experiences, which,
3 from the perspective of several superintendents that I
4 associate with, was for the purpose of -- maybe not the
5 purpose of, but -- I mean, from our perspective, it
6 allowed private companies to come into our state and
7 effectively use public tax dollars to run a private
8 business on on-line learning.

9 Several superintendents and I got
10 together and talked about a way to be able to keep
11 Washington kids learning Washington curriculum from
12 Washington teachers and compete with these on-line
13 programs that were out there that basically would, you
14 know -- and I don't -- I wasn't a part of these things
15 that were happening so it's from the outside looking
16 in. You know, and I can remember that.

17 But it looked like they would -- what's
18 the word I'm looking for? They were drawn to a school
19 district. They would put out a whole bunch of
20 advertising money to home school parents out there and
21 say free education, you know, dah, dah, dah, and do
22 this marketing glitz and have all of these parents
23 around our state apply through one single school
24 district somewhere and then all of that money then for
25 that apportionment would go to that school district and

1 go off to, you know -- it was for profit.

2 We're not for profit, so we believed in
3 putting that education money back towards education of
4 those kids, but we knew that if we were a whole bunch
5 of little mom and pop groups trying to -- trying to,
6 you know, compete against these huge, you know,
7 marketing companies, you know, there's no way we could
8 do it. So we decided we were going to become one
9 organization, basically a co-op, and the Columbia River
10 virtually goes through every part of the State of
11 Washington. And our goal was to have statewide public
12 education, you know, program for these parents who have
13 this legitimate choice, I think, in what they do for
14 their kids and be able to keep those Washington tax
15 dollars within Washington State and, you know, with
16 Washington curriculum and with Washington teachers.
17 And so we started CVA. Rather than be called all
18 parent partnership and, you know, Loon Lake parent
19 partnership, and, you know, all those little tiny
20 things out there besides CVA and be able to -- so when
21 people heard about CVA they could say, is that you guys
22 and we could say, yes, that's us.

23 So that's kind of what that became.

24 Q. There's about 15 school districts that are
25 part of this cooperative, right?

1 A. Correct.

2 Q. And is this along the 395 corridor or does
3 it --

4 A. There's hit and miss around the state.
5 There's some on the west side here, so --

6 Q. So --

7 A. So page 44?

8 Q. Do you recall me asking you in your
9 deposition how many students within this consortium it
10 was that were part of this Colville School District --

11 A. Right.

12 Q. -- that were going to CVA.

13 A. Right.

14 Q. And in your deposition you said 150 to 175,
15 right?

16 A. Right.

17 Q. All right. And then at some point you were
18 planning on expanding that --

19 A. Yes.

20 Q. -- more than doubling it to 330 students,
21 right?

22 A. Correct.

23 Q. And so this year, 2009-2010 is when you've
24 expanded and added the additional students to 330?

25 A. Well, that's not -- that's not how we can do

1 that because you're talking about something that hasn't
2 happened yet, and so whereas I hoped to expand them the
3 next year doesn't mean that I can say that it's been
4 expanded until the end of this year. So when I said it
5 was 300, that's what we expanded it to after the year
6 was over. This year we hope to expand it more if we
7 can. It's a great service.

8 Q. So, at some point, can you tell us when did
9 you have the 150 to 175 students in it?

10 A. I would say we finished with that the --
11 because you asked me about how many have you had in
12 that, and at that time we weren't done with the last
13 school year so I was going back to the previous year.

14 Q. Okay.

15 A. The previous year was 150 to 175.

16 Q. All right. And then it expanded to 330 or
17 so?

18 A. 300 and some, yeah.

19 Q. And now you hope to expand it yet again?

20 A. Hopefully, yes.

21 Q. And so for each student that you get you get
22 state apportionment?

23 A. Yes.

24 Q. All right. And why didn't you just expand it
25 to 330 or why didn't you -- why don't you just offer it

1 to the 330 students at the time that 150 or 175, or why
2 don't you just offer it to more now?

3 A. Why don't we do that?

4 Q. Right.

5 A. Well, we'd like to offer a really quality
6 program, and to do that you have to have people who are
7 trained to do that. You have to have the staff that's
8 trained to do that. It's a different way to offer an
9 education. It's every bit as intense as the typical,
10 in-the-building education, but it's different. It
11 takes different kinds of training for people. It takes
12 different education for how to do this stuff
13 differently. So, we'd rather do this slow and do it
14 correct and make sure it's -- you know, that parents
15 who are involved in it and kids who are involved in it
16 are getting a great product.

17 Q. So it takes some time to develop the program
18 in order to take additional students, to work out some
19 of the bugs, I think you said, right?

20 A. Well, I don't know if I said work on some of
21 the bugs but we want to do it right, so, yeah.

22 Q. If you could look in the binder I gave you
23 previously, Exhibit 1225.

24 A. Yeah. Right here?

25 Q. Do you recognize Exhibit 1225?

1 A. Well, it's faded but it looks like it's part
2 of our website in Colville.

3 Q. Okay. And did you write this? This is in
4 response to proposed budget cuts based on the
5 anticipated reduction in revenues from the most recent
6 legislative session; is that correct?

7 A. Just a minute. (Reading.) What you're
8 asking was I a part of -- I was a part of the creation
9 of this document. I probably didn't write it
10 personally, but --

11 Q. All right. I was looking for the time
12 frame. It was written last spring.

13 A. This would have been, I think, early in the
14 legislative session. It wasn't quite completed -- the
15 session wasn't quite completed, yet, I don't think.

16 Q. We're talking about the 2009 session, right?

17 A. This last legislative session, yeah.

18 Q. So February to May or so of 2009?

19 A. Right.

20 Q. All right. And if you --

21 MS. BASHAW: Respondents would offer Exhibit
22 1225.

23 THE COURT: Any objection to 1225?

24 MR. EMCH: No objection, Your Honor.

25 THE COURT: 1225 is admitted.

1 EXHIBIT ADMITTED

2 BY MS. BASHAW:

3 Q. If you go to the second page. And it says
4 they expanded Columbia Virtual Academy enrollment by
5 330 students, do you see that?

6 A. Yes.

7 Q. All right. And that's what you were just
8 referring to, that spring part of the '09 school year
9 is when you were looking at trying to expand to 330,
10 right?

11 A. Yes.

12 Q. And down at the bottom of the second page
13 there on Exhibit 1225, it looks like you have a waiting
14 list of more than 800 students to participate in this
15 program.

16 A. Actually it says Columbia Virtual Academy has
17 a waiting list of more than 800 students.

18 Q. That's what I meant.

19 A. Right. That's correct.

20 Q. And this is why you have to have time to be
21 able to develop your program so that you could handle
22 800 students.

23 A. Well, this says Columbia Virtual Academy has
24 a waiting list of over 800 students. It doesn't say
25 CVA Colville has a waiting list of over 800 students.

1 Q. So this is for the whole co-op.

2 A. Well, there's only over 800 students that are
3 on the waiting list to be a part of this co-op. Some
4 of those, frankly, live in other school districts. And
5 my first call -- when we have students who want to be
6 in Columbia Virtual Academy, my first call is to the
7 superintendent of that school district to say you
8 have -- there's kids who live within your boundaries
9 that want to enroll in our program. Are you interested
10 in having those kids in your school district and
11 serving them, and, if so, would you like to be a part
12 of Columbia Virtual Academy so that they can -- so that
13 those families can be a part of Columbia Virtual
14 Academy and be enrolled in your school district. And
15 that takes some time to do.

16 Q. All right. And on the next page I think it
17 actually does identify that in your district you have
18 about 70 to 80 that -- at least at the time this was
19 written, were on the waiting list. It's off of the
20 third page there.

21 A. Right. That's a pretty -- I think there's
22 probably many kids out there in our community who are
23 not enrolled in any school who need to -- who could be.

24 Q. On the second page --

25 A. I mean, if I could finish that. That's not

1 because I don't want to enroll them.

2 Q. Sure. No, I understand.

3 A. Because they're out there. okay.

4 Q. On the first page, there's a reference to
5 reopening Panorama Alternative High School --

6 A. Right.

7 Q. -- with an expected enrollment of 70 to 80
8 students. Right?

9 A. Yes.

10 Q. So this would be 70 or 80 other students that
11 would be waiting for CVA. It's not the same 70 or 80
12 students.

13 A. No, those are the same 70 -- those are the
14 same 70 to 80 students. If you're talking about the
15 numbers of students in our community who -- or school
16 age students who live out in the sticks and who never
17 come to school, it could be hundreds. I don't know. I
18 mean, it's pretty easy -- it's a pretty easy place to
19 hide. You know, so there could be hundreds of kids out
20 there who are -- you know, I mean, the last time we
21 opened Panorama we thought we were going to have 50
22 kids and 150 walked through the door.

23 Q. So tell us about Panorama. What is that?
24 You say reopen. Has it reopened?

25 A. It just reopened the other day, yes.

1 Q. All right. So how is it different from
2 Columbia Virtual Academy?

3 A. Well, actually, it's called CVA Panorama
4 because we want to be able to maintain that umbrella so
5 that, you know, for advertising or for name
6 recognition, I guess, for people because people are out
7 there looking for, you know -- people are marketing for
8 education basically and so they're looking for it.

9 So, how is it different than --

10 Q. How are the students different than would be
11 going to CVA Panorama versus just CVA?

12 A. Oh, CVA Panorama would be more of a walk-in
13 alternative program for at-risk students who don't
14 necessarily have a parent advocate. They don't have
15 parent advocates. Or if they do have parent advocates,
16 it's a strenuous situation in that household where the
17 parent-child relationship is not -- it's not working,
18 so --

19 Q. So the kids who aren't necessarily being home
20 schooled or have support from their parents would fall
21 into this group.

22 A. Correct.

23 Q. Now, it says reopen. So that suggests that
24 you had that program at one time.

25 A. Yes.

1 Q. And when did you have it and when did it end
2 before this recent period?

3 A. Well, we opened it in '92 -- I guess '92.
4 90 -- no, we opened it in '91. It was there for -- I'm
5 trying to think. I can't be exact, but I think it was,
6 like, '99 maybe.

7 Q. All right.

8 A. '98, '99 closed and then we just reopened it.

9 Q. And one of the reasons that it closed was
10 because the Panorama students had beaten the Colville
11 High School students in the Knowledge Bowl.

12 A. Yeah, they did a practice. They did a
13 practice -- the high school Knowledge Bowl team was
14 getting ready to go out to competition and the Panorama
15 kids got a group of kids together and went up and
16 helped the high school kids and practiced and they
17 competed and the Panorama kids won.

18 If that's one of the reasons they
19 closed, from my perspective, I think -- I think that it
20 was a political nail.

21 Q. The political nail being that the school
22 board didn't want the kids with the blue hair beating
23 the kids at Colville High School?

24 A. I don't know that they didn't want the kids
25 with the blue hair beating the kids at Colville High

1 School. I think what they realized was that we had
2 really highly quality students who could be very
3 successful at the high school that weren't there.

4 Q. In any event, the board has approved the
5 reopening and you're trying to bring those kids in
6 again, right?

7 A. That's correct.

8 Q. You're kind of getting loaded up over there.
9 I'll take this from you and give you this one back.

10 THE COURT: Which --

11 MS. BASHAW: The photograph binder again,
12 1618.

13 THE COURT: Okay.

14 BY MS. BASHAW:

15 Q. Okay. Let's look at page nine.

16 A. That's at the bottom LonCol09?

17 Q. Right.

18 A. Okay.

19 Q. I believe you talked about this photograph.
20 Is this the junior high school grounds?

21 A. This is the field and the junior high school,
22 yes.

23 Q. And it looks like there's some sort of a
24 soccer net there in the middle of the picture. Do you
25 see that?

1 A. Yeah, that's one of the chain link, like,
2 little baseball or softball kinds of -- you know, the
3 backstop kind of thing.

4 Q. So this is an area where the kids can do some
5 of their sports or athletic activities --

6 A. Yes, they can. Yeah.

7 Q. -- right? And then let's look at page 11.

8 A. Okay.

9 Q. Now, is this the same grassy field in 11 as
10 it is in 9, or is this another part of the school?

11 A. Well, if you look at the trees on the right
12 side of this picture --

13 Q. Yeah.

14 A. -- the first photograph was taken just
15 beneath those trees, so that's looking from the other
16 direction.

17 Q. All right. So it's essentially the same
18 field.

19 A. Right.

20 Q. All right. So then page 12, is that the
21 other end of the field?

22 A. That's just another view from over closer to
23 the softball fields.

24 Q. All right. So kids are on this grass quite a
25 bit.

1 A. Sure. I guess they're out there sometimes
2 for PE and sometimes for after school stuff.

3 Q. So --

4 A. Right.

5 Q. -- let's turn to page 22 and 23.

6 A. Okay.

7 Q. Is this Hosteler?

8 A. No, this is Fort Colville.

9 Q. Fort Colville Elementary, right?

10 A. Yes.

11 Q. And, so again, this grassy area that we have
12 behind the fence, that's all area that the kids can
13 play on and do recreational activities, right?

14 A. Right. Depending on the weather, yeah.

15 Q. Okay. Now, you see those dandelions in the
16 right-hand corner there?

17 A. Yep.

18 Q. Does that bother you that there's -- I mean,
19 do dandelions affect students learning?

20 A. Well, it depends on what they're learning, I
21 guess, but -- I'm sorry. I didn't mean to be funny.
22 Sorry. I guess it depends. But it depends on what it
23 is in reference to, what does it affect their learning.

24 Q. Does it interfere with their academic
25 learning for you to have some dandelions in the grass

1 there?

2 A. Probably not unless you're allergic to them,
3 I guess.

4 Q. All right. If we go to page 30.

5 A. Okay.

6 Q. And I think you testified that this -- the
7 sort of covered structure is a structure that's coming
8 down.

9 A. It's going to come down. It has not come
10 down, but it's going to come down.

11 Q. But the playground equipment isn't actually
12 under that structure, right?

13 A. No. The playground is on the other side of
14 that structure.

15 Q. And so this is part of Aster?

16 A. Yes.

17 Q. Okay. And right now the only students that
18 you have going to Aster are the Virtual Academy and
19 then I think you said some preschool students.

20 A. And preschool, right, and Panorama.

21 Q. All right. And it also looks like there
22 might be some dandelions in that field as well, right?

23 A. Okay. We have dandelions, yes.

24 Q. Okay. No real big deal.

25 A. Huh?

1 Q. No real big deal.

2 A. Well, except that people drive by and pitch
3 us crud because we can't take care of our playgrounds
4 or whatever. I mean -- I mean --

5 Q. Well, you let kids play on it?

6 MR. AHEARNE: Let him finish.

7 THE WITNESS: Well --

8 MS. BASHAW: I'm sorry. I thought he was
9 done, Your Honor.

10 THE COURT: The witness is still --

11 MS. BASHAW: All right.

12 THE WITNESS: I'm just thinking that, yeah,
13 they're no -- they're no big deal because on the
14 continuum of concerns that I have as a superintendent,
15 dandelions are down on there, but, you know, I've
16 driven by lots of yards and stuff around, you know, in
17 Seattle and I don't see lots of dandelions in yards, no
18 government office yards anyway.

19 Q. So --

20 A. So they must be a big deal to somebody. I'm
21 sorry. I didn't mean to do that to you.

22 Q. Are you finished now?

23 A. Yes, I'm finished. Sorry.

24 Q. In any event kids are out there playing on
25 this grass, right?

1 A. Yes, they are.

2 Q. We go to exhibit -- or page 42. We see --

3 A. I'm not there yet. Okay.

4 Q. We see lots of kids playing out on the field,

5 correct?

6 A. Yes. And no dandelions.

7 Q. And no dandelions.

8 A. How did that happen? I don't know how that

9 happened.

10 Q. If you could look at page 135.

11 A. Okay.

12 Q. That was one -- I think one of the pictures

13 Mr. Ahearne asked you questions about yesterday.

14 A. Yes.

15 Q. This is an area in your library that has some

16 computers set up.

17 A. In Fort Colville, yes.

18 Q. And so look at the page before, 134.

19 A. Okay.

20 Q. That would give us a better view of that

21 whole area with all those computers, right, that are in

22 the library?

23 A. Yes.

24 Q. And then look at page 145.

25 A. Okay. 145, yes.

1 Q. Now, this appears to be -- so correct me if
2 I'm wrong -- the computer lab that you talked about
3 that you didn't want to put too many computers in there
4 because it would be too hot.

5 A. Yes.

6 Q. All right.

7 A. That's true.

8 Q. Now, if I'm not mistaken, those were all
9 Apple computers.

10 A. They are.

11 Q. And I don't actually see where the hard
12 drive -- where the actual -- I see the monitors. Is
13 this the Apple computer that has the actual hardware
14 that's part of the monitor?

15 A. Yes.

16 Q. And so that's part of why Colville High
17 School is described as having state of the art
18 technology, is it not?

19 A. Well, this is not Colville High School.

20 Q. Okay.

21 A. This is Fort Colville.

22 Q. So this is the elementary school.

23 A. Yeah. So what's your question? Is your
24 question about why does the website for the high school
25 say it has state of the art equipment?

1 Q. No. And I confused myself because I thought
2 this was the high school.

3 A. Okay.

4 Q. So Colville High School is described as
5 having state of the art technology, and it looks like
6 Fort Colville also has state of the art technology.

7 A. I would say, in all honesty, Fort Colville
8 has more state of the art technology than Colville High
9 School does right now, because we just purchased these
10 on a levy last year, so they're --

11 Q. I think you testified that the high school,
12 some of the computers, are computers that the kids were
13 able to build as part of one of their classes.

14 A. Well, it's a club actually, and a group of
15 kids get together with one of the technology guys and
16 they're kind of learning how to take parts of computers
17 and put them together and make, you know -- I don't
18 know that you would usually called those state of the
19 art, but they're somewhat usable for a while, yeah.

20 Q. All right. Now, yesterday you were talking
21 about all the water that you have in your area --

22 A. Yes.

23 Q. -- right? And the concerns that you have
24 with that -- actually, I think you described an area
25 where the kids went fishing.

1 A. No, I said they pretended to be.

2 Q. Well, pretended to be fishing.

3 A. They were making fun, you know, pretending to
4 be fishing, right?

5 Q. Yeah. And I think you mentioned that, you
6 know, you watch out for mold, right?

7 A. Correct.

8 Q. But your district has never really had -- I
9 think you made a reference to the term the scary mold?

10 A. Right. Our neighboring district had it and
11 we saw what happened to them and we're very fortunate
12 we haven't had that.

13 Q. So you actually haven't had any problems with
14 mold that affected students.

15 A. I wouldn't say it hasn't affected students.
16 We've had to move kids out of classrooms for two or
17 three days at a time in order to -- in order to make
18 sure that we took care of the problem before it became,
19 you know, a health issue. So that affects students.
20 But we've never had kids have any kind of illness
21 because of mold, no.

22 Q. All right.

23 A. Not that I know of.

24 Q. If you could turn -- let's see, I think I'm
25 done with pictures.

1 A. Okay.

2 Q. Exhibit 1227. Mr. Emmil, do you recognize
3 Exhibit 1227 as the Chamber of Commerce brochure that
4 the Colville Chamber of Commerce puts out that we
5 talked about in your deposition?

6 A. Yes, that looks like the cover of it, yeah.

7 Q. Okay. And the pages following?

8 A. I'm assuming so.

9 Q. And do you see there on page four, if you go
10 up to the top, the number there at the top of the
11 document and you see --

12 A. Yes.

13 Q. -- a copyright date of 2008? Do you see
14 that?

15 A. Would it be at the top or --

16 Q. Well, it's in the text on the right-hand side
17 below the flower.

18 A. Okay.

19 Q. The next paragraph?

20 A. That is really small. I mean, I don't want
21 to hold us up, but if it says 2008, I will say, yeah,
22 okay, it says that.

23 THE COURT: Counsel, perhaps we could take a
24 recess at this time five minutes early and return five
25 minutes early and that will give an opportunity,

1 perhaps, for the witness to retrieve his eyeglasses.

2 THE WITNESS: Okay. I can do that. Thank
3 you.

4 THE COURT: So it might make it easier and
5 more efficient for us to proceed when we can make sure
6 he can read what's in the documentation.

7 Why don't we take our noon recess.
8 Let's start the afternoon session at 1:25 this
9 afternoon.

10 Court will be in recess.

11 MR. AHEARNE: Thanks, Your Honor.

12 (Noon recess.)

13 --oOo--

14

15

16

17

18

19

20

21

22

23

24

25

1 SEATTLE, WASHINGTON

2 THURSDAY, SEPTEMBER 3, 2009

3 AFTERNOON SESSION - 1:25 P.M.

4 --oOo--

5 THE COURT: Good afternoon. Please be
6 seated.

7 We're back on the record in McCleary
8 versus State of Washington. I believe we were on
9 Exhibit 1227.

10 BY MS. BASHAW:

11 Q. Mr. Emmil, Exhibit 1227, I think we stopped
12 at looking at the very small print.

13 A. Yeah. 2008. I got it.

14 Q. Thank you. And if you would return to page
15 24 in this Chamber of Commerce brochure.

16 A. Okay. I'm there.

17 Q. And this is the page of the brochure that we
18 talked about in your deposition describing the Colville
19 School District, correct?

20 A. Yes.

21 MS. BASHAW: Your Honor, respondent's would
22 offer 1227.

23 THE COURT: Any objection to 1227?

24 MR. EMCH: No objection, Your Honor.

25 THE COURT: 1227 is admitted.

1

EXHIBIT ADMITTED

2 BY MS. BASHAW:

3 Q. If you could just flip back for a second to
4 page six.

5 A. Does it say location and transportation on
6 there?

7 Q. Yes.

8 A. Yes. Okay.

9 Q. And I'm not sure if I just didn't hear you
10 correctly yesterday, but at the bottom of that -- the
11 text on the left-hand side of the page at the very last
12 sentence where it starts winter temperatures, do you
13 see that?

14 A. I see summer temperatures, fall, lights. You
15 mean on the second --

16 Q. The very last line. The sentence starts out,
17 winter temperatures are, and then it goes up to the top
18 of the next text on the right-hand side. Do you see
19 that now?

20 A. Okay.

21 Q. And, again, I just wasn't sure if I misheard
22 you but I thought I heard you say yesterday that you
23 get 80 or 90 inches of snow in Colville and the Chamber
24 of Commerce brochure indicates that you get an average
25 of 30 to 36 inches of snowfall.

1 A. Okay.

2 Q. Did I mishear you or did you --

3 A. No. This is not my document, ma'am. I

4 didn't put this together. I didn't --

5 Q. All right.

6 A. I have nothing to do with this document. I

7 just know that I measured -- we measured the snow, our

8 maintenance department, did in the high school parking

9 lot last year and it was 83, I think, this last year.

10 Q. Then back on page 24.

11 A. Okay.

12 Q. It indicates that if anybody in the community

13 wants to know more about the Colville School District,

14 both at the very bottom on the left-hand side, it

15 indicates that they're to visit your website or to give

16 you a call, correct?

17 A. Yes.

18 Q. All right. And it says that again on the

19 right-hand side of the page. Check out our website.

20 Right? That's the Colville website, Colville School

21 District website?

22 A. Correct.

23 Q. You talked earlier about that you don't have

24 TRY pay or supplemental pay for your certificated

25 staff, correct?

1 A. Correct.

2 Q. But you do enter into collective bargaining
3 agreements with them.

4 A. With our --

5 Q. Certificated staff?

6 A. Absolutely, yeah.

7 Q. And the collective bargaining agreements are
8 negotiated between the district and the teachers, the
9 certificated staff union?

10 A. Yes.

11 Q. And nobody from the State of Washington
12 participates in those negotiations, right?

13 A. No.

14 Q. Correct?

15 A. Correct. That's correct, yeah.

16 Q. If you could turn to Exhibit 1228.

17 A. Okay. I'm there.

18 Q. And Exhibit 1228 is the form 1497, or the
19 Minimum Basic Education Requirement Compliance form
20 that the school district signs and sends back to the
21 State Board of Education; is that right?

22 A. Yes.

23 Q. And Exhibit 1228, do you recognize this as a
24 compilation of various years in which that form was
25 signed?

1 A. '01, '04, correct. Okay.

2 Q. And then on pages six -- excuse me, page
3 seven and page eight and page nine, it looks like it's
4 your signature signing on behalf of the district.

5 A. For '05, for '06, for '07, that's correct.

6 MS. BASHAW: Your Honor, respondents would
7 offer Exhibit 1228.

8 MR. EMCH: No objection to 1228, Your Honor.

9 THE COURT: 1228 is admitted.

10 EXHIBIT ADMITTED

11 BY MS. BASHAW:

12 Q. If you could turn to Exhibit 1220.

13 A. Okay.

14 Q. Are you familiar with school districts being
15 identified in State of Washington as some of the
16 out-performing school districts?

17 A. Oh, I suppose there's people out there who
18 measures one school district against the other, yeah.

19 Q. And, in fact, Colville School District was
20 identified as one of those out-performing schools,
21 right?

22 A. This is -- is this about us? Is this page
23 right here about us?

24 Q. If you look at the last page, you'll see
25 Colville School District listed as one of the

1 out-performing districts.

2 A. Right. Reading, math, proficiency, 65.1
3 percent, that's us.

4 Q. All right.

5 A. Right.

6 Q. And, in fact, the Colville School District
7 has received, or some of the staff, the principals have
8 received, a fair amount of recognition over the years
9 as an out-performing district; isn't that correct?

10 A. Yes. I think our high school was top 100 or
11 something like that last year, yeah.

12 Q. The top 100, that would be the U.S. News and
13 World Report?

14 A. Yeah, I think that's what it came out in,
15 yeah.

16 Q. And you got a bronze medal; is that correct?

17 A. Yes.

18 Q. All right. And, in fact, your high school
19 principal, Kevin Knight, he was given a
20 Superintendent's Learning Improvement Award and is
21 recognized -- the Colville Senior High School is
22 recognized as a school of distinction in 2008?

23 A. Yes, that's true.

24 Q. And what does it mean to be a school of
25 distinction?

1 A. You know, I have no idea what their criterion
2 is so I can't -- I don't know that. I can't answer
3 that.

4 Q. In any event, from the Office of
5 Superintendent of Public Instruction, Colville High
6 School was identified as one of those schools of
7 distinction.

8 A. That's correct.

9 Q. All right. Now, Colville High School, on
10 your website indicates that you have 41 percent of your
11 students are attending four-year colleges after
12 graduation; is that right?

13 A. Oh, okay. I don't have it in front of me,
14 but --

15 Q. And that there are 21 percent attending
16 two-year colleges? Does that sound about right?

17 A. Are you asking me if I think that's right or
18 if I'm -- because I don't have that in front of me.

19 Q. I'm asking if you're familiar with that.

20 A. Two-year colleges, depends on the year, but
21 that's possible, yes.

22 Q. Okay. And the 11 percent are attending
23 vocational and technical programs.

24 A. That's a possibility.

25 Q. And about two percent joined the military.

1 A. Yeah. That depends on the year.

2 Q. So that's about 75 percent of your graduates
3 are going on to one of these various things.

4 A. Okay.

5 Q. Do you have any reason to disagree with those
6 numbers?

7 A. No. No. No.

8 Q. All right. Mr. Emmil, are you aware that any
9 studies or analyses that link the performance or
10 passage rate on the WASL with funding?

11 A. No.

12 Q. Are you aware of any studies or analyses that
13 link the performance or passage rate of -- excuse me,
14 graduation rates on funding?

15 A. Not that I can name, no.

16 MS. BASHAW: Nothing further, Your Honor.

17 THE WITNESS: Is that it?

18 THE COURT: No.

19 THE WITNESS: No? Oh, okay.

20 THE COURT: It's redirect examination.

21 MR. AHEARNE: You can't escape yet okay.

22 REDIRECT EXAMINATION

23 BY MR. AHEARNE:

24 Q. Mr. Emmil, if I could please hand you Exhibit
25 689, please.

1 And this is one of the report cards that
2 Ms. Bashaw asked you about?

3 A. Yes.

4 Q. And she asked you about the financial data
5 columns that are in there. Do you see that?

6 A. Yes.

7 Q. Do you know how the numbers in there are
8 calculated, let's say the 8,362 for revenue or the
9 7,013 for state?

10 A. This is a state document. They do that.

11 Q. Do you know how the numbers are calculated
12 though?

13 A. I think they take our financials and use
14 those, I guess.

15 Q. Okay. Ms. Bashaw asked you some questions
16 about all-day kindergarten.

17 A. Yes.

18 Q. Why does Colville School District provide
19 all-day kindergarten?

20 A. Well, we -- as a district, we have concluded
21 that our kids in our area are absolutely not ready for
22 first grade unless we provide them with a full year of
23 kindergarten.

24 Q. If I can ask you to turn to Exhibit 422,
25 please, which is that F-196.

1 A. I have it.

2 Q. Ms. Bashaw asked you some questions about
3 that. First, if I could ask you to turn to -- she had
4 you look at what's, in the upper right-hand corner, in
5 all caps PAGE: 3, titled Statement of Revenues,
6 Expenditures.

7 A. Page what? Excuse me.

8 Q. Three.

9 A. Okay.

10 Q. All caps in the upper right-hand corner.
11 It's starts state revenues, expenditures. Do you see
12 that?

13 A. Yes.

14 Q. She asked you some questions about, did you
15 go through the General Fund balance column all by
16 itself and come up with the \$18.3 million figure as
17 your total expenditures. Do you see that?

18 A. Hold on a minute. Under expenditures.

19 Q. Under just General Fund.

20 A. Yes, 18.348. Got it.

21 Q. Okay. If you go all the way over to the
22 right, though, for total expenditures --

23 A. Right.

24 Q. -- are your total expenditures that year
25 19,391,000?

1 A. Yes.

2 Q. So it's approximately the 19.4 million --

3 A. Right, that's correct.

4 Q. -- that we talked about earlier?

5 And if you look right under that,
6 there's a \$480,000 looks like a net negative; is that
7 correct?

8 A. Yeah, that's a negative.

9 Q. How did Colville School District pay that
10 excess of \$480,000 that -- in their expenditures over
11 their revenues?

12 A. From our reserves.

13 Q. If I could ask you to look at the first page,
14 the cover page of Exhibit 422.

15 A. Right.

16 Q. The line that says beginning total fund
17 balance, do you see that?

18 A. Yes.

19 Q. And it goes all the way over to 1,541,000.
20 Do you see that?

21 A. That's correct, yes.

22 Q. That was your fund balance at the beginning
23 of that year, correct?

24 A. That's correct.

25 Q. And then if I go down to where it says end

1 total fund balance 1,060,000; is that correct?

2 A. Yes.

3 Q. So do I understand it correctly that you took
4 approximately half a million out of your fund balance
5 or your reserves to cover that shortfall that year?

6 A. Yes.

7 Q. If I can ask you to turn to -- Ms. Bashaw --
8 actually, if I could put 651 in front of you, please.
9 You'll still need that one.

10 A. Okay

11 Q. Exhibit 651, that's the matrix we went
12 through earlier with the Colville School District basic
13 education, correct? Upper left-hand corner.

14 A. That's correct.

15 Q. We talked about line 13 for basic ed
16 portions, 17 for special ed, 21 for lab --

17 A. Right.

18 Q. 25 for bilingual, et cetera, et cetera?

19 A. Yes.

20 Q. And those are the program funding formulas we
21 talked about?

22 A. Those are the formulas, yes.

23 Q. Okay. And Ms. Bashaw asked you on page 26 of
24 the F-196 -- that's Exhibit 422.

25 A. Okay.

1 Q. And when I say page 26, it's the all caps :26
2 in the upper right-hand corner. Do you see that?

3 A. Okay. I have it, yes.

4 Q. Where it's titled General Fund. Do you see
5 that?

6 A. Yes.

7 Q. Okay. And she asked you some questions, for
8 example, on the special ed, that line 21, do you see
9 that?

10 A. Yes.

11 Q. And she noted that the state's resources were
12 \$1,279,000, correct?

13 A. Yes, that's correct.

14 Q. And that your program expenditures were that
15 exact same amount, 1,279,000. Do you see that?

16 A. That's correct, yeah.

17 Q. What does that signify that the expenditure
18 in this program is the same as the state's resources in
19 that program?

20 A. It has to be.

21 Q. What do you mean it has to be?

22 A. Well, the county requirements from the state
23 are that we -- that we code expenditures for our school
24 district to the exact amount that we get in revenue.

25 Q. So the accounting department -- are you

1 allowed to put more than the program expenditure than
2 the state resource?

3 A. No, absolutely not.

4 Q. Is the same thing true, for example, the
5 learning assistance line, line 55 where your 181,000 in
6 resources matches exactly to the penny your 181,000 in
7 expenditures?

8 A. It's true for all of those. So we have to --
9 we have to code the exact amount that we're getting in
10 revenue, we have to code to expenditure.

11 Q. And that's in the program funding formulas?

12 A. Yes, in these -- that's what these are.
13 Well, they're correlated to these over here, so they --

14 Q. Ms. Bashaw had asked you about the skate
15 park.

16 A. Okay.

17 Q. She showed you the picture of the skate
18 park. You said --

19 A. Yes.

20 Q. -- it was the skate park.

21 A. Okay. Yeah. Yeah.

22 Q. Okay. And who paid for all the equipment in
23 that skate park?

24 A. The city.

25 Q. And are students allowed to use that during

1 the school day?

2 A. No. In fact, there's a big sign on there
3 that says you can't use it during the school day.

4 Q. If I can ask -- I'm done with that exhibit
5 now. I'll run through these in generally the order
6 Ms. Bashaw did.

7 If I can ask you to look at Exhibit --
8 the one with the photos, I think it's 1218 -- 1618,
9 sorry. 1618.

10 And the first photo Ms. Bashaw had asked
11 you about was LonCol009. Do you have that in front of
12 you, please?

13 A. Yes, I do. You're waiting for him? Okay.

14 Q. And she asked you if that's a field that
15 people can play on, is that correct, something along
16 those lines?

17 A. Yes.

18 Q. Okay. And can students play on that field
19 all year long?

20 A. No. No.

21 Q. Why not?

22 A. Well, it depends on the weather. Basically
23 from, I'm thinking, November, middle of November until
24 end of March, first of May, it's either covered in snow
25 and how much snow is for debate, I guess. But it's

1 covered in snow or it's a swamp.

2 Q. Okay. And the next picture she had you look
3 at then was a photograph number 11 which she said was a
4 continuation then of that same field.

5 Do you have that in front of you?

6 A. Yes.

7 Q. And behind that batting cage there, that
8 brown stuff, is that the swamp grass you were talking
9 about earlier?

10 A. That's swamp grass, yeah.

11 Q. Okay. And then the next picture she had you
12 look at was a continuation of that same field is
13 photograph 12; is that correct?

14 A. Photograph 12, that's just the same field
15 from another angle.

16 Q. Okay. And what's that on the other side of
17 the curb there, the brownish, grayish stuff?

18 A. That's gravel. That's gravel and dirt.
19 That's our track -- our junior high track.

20 Q. Okay. What kind of condition is that in?

21 A. It's gravel and dirt. For track, it's in
22 horrible condition.

23 Q. The next set of pictures that Ms. Bashaw had
24 you look at was -- or several of these, but if you
25 could turn to 134, please.

1 A. Okay.

2 Q. What she said was a fuller picture of more of

3 the computers in that room --

4 A. Yes.

5 Q. -- right?

6 A. Yes.

7 Q. And then while you stay on 134, if you could

8 turn to 145, please.

9 A. 145?

10 Q. Yes, sir.

11 A. Okay.

12 Q. Now, what is photograph 145 a picture of?

13 A. Computer lab.

14 Q. And what's picture 134 a picture of?

15 A. Computer lab.

16 Q. Is that the same computer lab?

17 A. Yeah, same computer lab.

18 Q. And do you have one teacher teaching both

19 labs at the same time?

20 A. Yes.

21 Q. And so when the teacher is in 134, who is

22 teaching the students in 145?

23 A. They're on their own.

24 Q. And when the teacher's in 145, who's teaching

25 the kids in 134?

1 A. Same, they're on their own.

2 Q. So do I take it, the teacher then walks back
3 and forth from room to room to room?

4 A. Correct.

5 Q. And how did the Colville School District fund
6 the computers that are in the two rooms of the one
7 computer lab?

8 A. Local levy.

9 Q. And if you had to rely on state funding,
10 would you have been able to buy these?

11 A. No. No. Not at all.

12 Q. As Ms. Bashaw brought up the idea -- or the
13 topic of your high school computers.

14 A. Yes.

15 Q. And she mentioned that some of them were
16 built by your own students?

17 A. That's correct.

18 Q. Are the high school computers you have that
19 are built by your own students, are they state of the
20 art?

21 A. No --

22 Q. Are they --

23 A. -- they're not.

24 Q. Are they reliable?

25 A. Sometimes.

1 If I can ask you to turn to Exhibit 1214,
2 another Exhibit that Ms. Bashaw brought up.

3 Q. These are printouts from the Colville
4 webpage; is that correct?

5 A. Yes.

6 Q. I see on the first page there's a date of
7 March 4, 2009. Do you see that?

8 A. Yes.

9 Q. Now, is the information on this exhibit on
10 the webpage, is that current, up-to-date information?

11 A. This isn't. This was from March 4th.

12 Q. Okay. But as of March 4th was it -- I mean,
13 does -- I'll strike that.

14 A. Maybe.

15 Q. Well, does Colville keep its webpage up to
16 date?

17 A. No.

18 Q. Why not?

19 A. Well, to the best we can.

20 Q. Why not?

21 A. We don't -- well, we don't have anybody whose
22 job it is to do that.

23 Q. Why don't you hire somebody to do that?

24 A. That would mean hiring a webmaster or
25 somebody who read through it every day and made sure it

1 was up to date and added things to it.

2 We have secretaries who put stuff on
3 there. We have principals who put stuff on there. We
4 have teachers who do. I mean, I don't have time to go
5 through this every day and make sure that it's up to
6 perfect.

7 MR. AHEARNE: Your Honor, did I say the
8 exhibit number wrong again?

9 THE WITNESS: No.

10 MR. AHEARNE: I have 1214.

11 THE WITNESS: Yeah.

12 THE COURT: Yeah, that's what I have. Yes.

13 BY MR. AHEARNE:

14 Q. If I could ask you, please, Mr. Emmil, to
15 turn to what's Bates number at the top a bunch of
16 leading 0's then a 4. It says Colville High School.

17 A. Okay.

18 Q. And the third paragraph down currently says
19 Colville High School offers two diplomas. Do you see
20 that?

21 A. Yes.

22 Q. And it says, The basic education diploma is a
23 19-credit diploma that meets Washington State's basic
24 education requirements. Do you see that?

25 A. Yes.

1 Q. And when it's referring to the Washington
2 State's basic education requirements, what's that
3 referring to?

4 A. That's referring to the funding formulas and
5 that it's 19 credits of 55 minutes in front of -- in 55
6 minutes a day, 180 days a year. You know, those
7 credits.

8 Q. Okay. And does this basic education diploma
9 of 19 credits that's being referred to here --

10 A. Right.

11 Q. -- does that allow students, then graduates,
12 high school graduates to get into college?

13 A. Absolutely not. There isn't a -- the state
14 doesn't -- we don't have a university that will take a
15 student with 19 credits.

16 Q. Does the state's own universities accept a
17 student that gets the basic education diploma of 19
18 credits?

19 A. Absolutely not.

20 Q. Okay. Whose the largest employer in
21 Colville?

22 A. Colville School District.

23 Q. Okay. And you're familiar with other
24 employers in your area from your various votary, et
25 cetera?

1 A. Right.

2 Q. Will this basic education diploma allow a
3 high school graduate to get a living wage job in your
4 area?

5 A. Not anymore.

6 Q. What do you mean by not anymore?

7 A. Well, the world's changed. So it used to,
8 but not anymore, no.

9 Q. Okay. And I ask you to turn again, please,
10 to 1220 -- actually stay on that one. If I can ask you
11 to look at page eight, a bunch of leading 0's and 8 in
12 the upper right-hand corner.

13 A. Okay.

14 Q. It says, Fort Colville Elementary School is a
15 fantastic school, do you see that?

16 A. Yes.

17 Q. Do you know why it says that?

18 A. Yeah, because my elementary principal
19 insisted on having that in there.

20 Q. And do you believe that Fort Colville
21 Elementary is a fantastic school?

22 A. I think it's as fantastic as he can make it
23 and we can make it with the resources that we have,
24 yes.

25 Q. Okay. If I can ask you to turn to Exhibit

1 1225, please. It's another exhibit that Ms. Bashaw had
2 asked you some questions on. Do you have that in front
3 of you?

4 A. Yes.

5 Q. And she's asked you some questions about the
6 Panorama Alternative High School. Do you recall that?

7 A. I do.

8 Q. And why does Colville have an alternative
9 high school?

10 A. Well, we have to catch kids that are falling
11 through the cracks. We have to figure out new ways to
12 keep them in the school and keep them there long enough
13 to graduate before they dropout.

14 Q. And has Colville had any experience with this
15 alternative high school approach being successful in
16 keeping kids from slipping through the cracks?

17 A. Absolutely, several, yes.

18 Q. Can you give us an example?

19 A. Well, one example is the one that -- well, I
20 mentioned earlier that we have the pizza place. So I
21 have a Panoramic graduate who owns a pizza chain, has
22 20 stores around the State of Washington, all of which
23 are owned by former Panoramic graduates, and they're
24 all, you know, doing very well. They are starting a
25 shirt company where they make shirts with a certain

1 design on it. They're sponsoring fighters in May. I
2 mean, that's a -- you know, that's one great -- one
3 great example.

4 Q. And this is a Panorama graduate that you're
5 referring to that started the pizza chain, et cetera.

6 A. (NAME REDACTED), yes.

7 MR. AHEARNE: Could I move to strike the name
8 of the student from the record?

9 THE WITNESS: Oh, I'm sorry.

10 THE COURT: Yes. Motion to strike is
11 granted.

12 BY MR. AHEARNE:

13 Q. This student, without saying his name, do you
14 know him personally?

15 A. Yeah, he's one of my son's, probably,
16 strongest mentors.

17 Q. And would he have graduated from high school
18 without the alternative school?

19 A. No. Sorry, just about to say his name
20 again. He was -- he blew up the toilet at the junior
21 high when he was an eighth grader. He was a drug
22 dealer and drug addict. He was -- he was a mess. He
23 was absolutely a mess. Yeah, great -- good kid, good
24 heart, but wrong direction.

25 Q. What did the alternative school have to do

1 with his graduating from high school?

2 A. I think we gave him a reason to be
3 successful. We gave him pride in himself. We gave
4 him -- I think we helped give him a reason to care
5 about his future.

6 Q. And any other examples of how -- or would you
7 draw any conclusions from your experience Colville's
8 experience with its alternative high school as to
9 whether putting the resources into schools like that
10 produces results?

11 A. I'm sorry. Can you -- I was still thinking
12 about him. You know, my --

13 Q. Put him out of your mind for a second.

14 A. Okay. Sorry about that.

15 Q. From your experience with the alternative
16 high school in Colville, does that lead you to any
17 conclusions about whether putting resources into
18 programs like that produces results?

19 A. Right. We -- well, we talked about this
20 yesterday, that the -- if we're going to stop kids from
21 dropping out of school, if we're going to stop -- if
22 we're going to help kids be successful in the future,
23 we're going to have to put resources into them.

24 If we had not put the resources into
25 Panorama School to catch those kids, you know,

1 there's -- there's -- I mean, there's just 20, just in
2 that one instance that wouldn't -- that wouldn't have
3 made it.

4 Q. Okay. On the last page of this exhibit,
5 there's a series of questions and answers and the
6 second answer from the bottom it says, No, and then it
7 says, All students are at risk given the right or wrong
8 circumstances. Do you see that?

9 A. Right. That comes from a conversation I had
10 with my school board one time when they asked me how
11 many of our kids are at risk, and I looked at them and
12 said all of them are.

13 Q. Well, why -- that's not the kids within well-
14 to-do families or --

15 A. All kids or at risk. Every kid is at risk.

16 Q. Why do you say that?

17 A. Kids are fragile. Their lives are fragile.
18 Your kid is at risk. Your kid is at risk. Your kid is
19 at risk. Everybody's kids are at risk.

20 It doesn't -- I mean, my kids are at
21 risk. If I leave here and cross the street and get hit
22 by a car, they're fatherless. They're at risk. The
23 thing I tell parents is this, is that, you know, people
24 from well-to-do families sometimes don't think that it
25 can happen to them. They have this delusion about

1 their kids, that they're going to be great. And I have
2 them all the time come to me and say why do we need
3 that alternative school, you know, my kids are fine.
4 And the thing I tell them is that you don't -- you
5 don't know you need me until you need me. And
6 invariably the people who are the most adamant about
7 not ever needing me end up coming back to me, you know,
8 with their tail between their legs saying, okay,
9 remember what I said? I need help.

10 Q. If I can ask you to turn to Exhibit 1228,
11 please. One of the exhibits Ms. Bashaw asked you a
12 question about.

13 A. Okay.

14 Q. And she noted that on pages -- upper right-
15 hand corner, leading 0's and a 7, 8, and 9, she called
16 those to your attention. Do you recall that?

17 A. Yes.

18 Q. Let's just look at, for example, page nine,
19 there's a certificate of compliance?

20 A. Yes.

21 Q. And under that it says, We hereby certify
22 that the Board of Directors has been apprised and that
23 the Colville School District meets all the requirements
24 relating to the minimum requirements of state basic
25 education programs. Do you see that?

1 A. Yes.

2 Q. What does that certification mean to you?

3 A. That means we met all of the funding formulas
4 that the state requires.

5 Q. And is that the same then with respect to
6 your signature on the prior pages as well?

7 A. Right. It -- right. It means that our kids
8 went to school and that means that they were in class.
9 It doesn't have -- like I said before, it has no
10 correlation between whether there's learning taking
11 place and standards being met and -- none.

12 Q. Okay. If I can ask you to turn to Exhibit
13 1220, please.

14 A. Okay.

15 Q. And Ms. Bashaw asked you some questions about
16 this document that says at the top that it comes from a
17 School Matter Service Standard & Poor's. Do you see
18 that?

19 A. Standard & Poor's , yeah.

20 Q. Do you have -- do you know who this School
21 Matters organization is that -- or whoever it is that
22 produced this document?

23 A. No.

24 Q. Do you know what it means to be an
25 out-performing school according to whoever it is that

1 wrote this document?

2 A. I have no idea what their standards were for
3 that.

4 Q. If I can ask you to turn to Exhibit 1227,
5 please, which is that Chamber of Commerce brochure
6 Ms. Bashaw had asked you some questions about.

7 A. Sure.

8 Q. And on the Chamber of Commerce brochure, if I
9 look at the page with leading 0's at the top of 24 in
10 the right-hand corner. Do you have that page in front
11 of you?

12 A. Yes.

13 Q. And in the first paragraph, upper left-hand
14 side, the last sentence says, Washington Assessment of
15 Student Learning, WASL testing, reveals scores for
16 Colville above state average in most areas. Do you see
17 that?

18 A. Yes.

19 Q. Does that mean Colville schools are doing
20 well?

21 A. No, that means what it says. It means that
22 Colville schools are above the state average.

23 Q. And, as the superintendent of Colville School
24 District, do you think being above state average is
25 good?

1 A. It's a C+. No, I don't think it's good.

2 Q. Is it acceptable?

3 A. Not for me.

4 Q. Does it mean that the children in the
5 Colville School District are learning the knowledge and
6 skills to state standards?

7 A. Some, but not all.

8 Q. Ms. Bashaw asked you if you were aware of
9 studies, analyses, et cetera that link the success of
10 students on tests like the WASL with funding, correct?

11 A. That's correct.

12 Q. And if I understood your answer correctly,
13 you're not aware of any that link it saying that there
14 as an affect, correct?

15 A. That's correct. I don't -- I don't spend
16 time doing that, looking for those, so --

17 Q. Are there any that say there's not an affect?

18 A. No.

19 Q. She asked you questions about whether there
20 were studies or analyses that link high school
21 graduation rates with funding. Do you remember that
22 question?

23 A. Yes.

24 Q. Okay. Are you aware of any that say there's
25 not an affect or a link?

1 A. Well, just -- I just have personal -- I mean,
2 I have a personal action study that I've been doing
3 that shows that there is a -- that resources affect
4 student graduation.

5 Q. What you are referring to is a -- well, let's
6 break this in parts. Are you aware of studies by
7 others that show a link between understanding levels
8 and high school graduation?

9 A. No.

10 Q. And so you're not aware of a study that shows
11 there is or is not a link, correct?

12 A. Not from others, no.

13 Q. Okay. And you referred to something by you.
14 What are you talking about?

15 A. I'm talking about -- I mean, it's an action
16 study, basically, in real life and that when we put
17 resources towards the average students at Panorama,
18 graduation rates go up. That's a -- that is a proven
19 fact. So that's a -- I don't know if you'd call that a
20 study, but I think people do actual studies all the
21 time. It's not formal, no, but it proves to me that
22 putting resources towards those students has an impact
23 on graduation levels.

24 Q. And is it your experience, as the
25 superintendent of Colville School District, that when

1 you devote additional resources to education, student
2 performance improves?

3 A. Yes.

4 Q. And is it your experience that when you
5 devote additional resources to education, high school
6 graduation rates improve?

7 A. Yes. I think that's what I just said, yeah.

8 Q. Okay.

9 MR. AHEARNE: I have nothing else, Your
10 Honor.

11 THE COURT: Thank you, Mr. Ahearne.

12 Ms. Bashaw?

13 MS. BASHAW: No further questions, Your
14 Honor.

15 THE COURT: Not yet.

16 THE WITNESS: So that's it?

17 THE COURT: No.

18 THE WITNESS: Oh, I'm done?

19 THE COURT: No.

20 THE WITNESS: Oh, you're excused, and you're
21 tricking me. Okay.

22 EXAMINATION

23 BY THE COURT:

24 Q. Okay. Now you get the hard questions.

25 A. Okay. The hot seat.

1 Q. Hot seat. Mr. Ahearne just asked you some
2 questions about your personal experience and your
3 opinion is that when you put more resources into kids,
4 and first I think it was limited to Panorama and then,
5 more broadly, graduation rates go up.

6 A. Right.

7 Q. Can you tell me what type of resources you
8 think that is, are --

9 A. Yeah -- yes.

10 Q. -- the type of resources you think those are
11 and why you think that graduation rates are going up?

12 A. I think that -- just in one instance, if we
13 put -- if we had a club or an activity or a sport of
14 single interest that our kids had out there, every
15 single kid in our school districts would have a reason
16 to stay in school. You wouldn't have -- you would have
17 zero kids dropping out of school. If there was
18 something that was interesting to them that they could
19 participate in, you'd be surprised what kids will
20 endure in order to be able to participate in what they
21 love.

22 And while they may not love British
23 literature or math or science or anything like that,
24 they will stay there long enough to learn those things
25 and do well enough in those things to be able to

1 participate in the thing they do love. And it would be
2 my goal, if I had the resources, to ask every kid in my
3 school district what their passion was, and I would
4 create that program for those kids so that they had
5 that hook and that reason to stay. That's one
6 example.

7 The other example is that in every -- in
8 every classroom in every school, there is an amazing
9 amount of different personalities and different
10 learning styles and different brains that operate
11 differently. Frankly, our staff in their knowledge
12 about that is outdated. And if I could put resources
13 into training my staff in some of these new things that
14 we've learned over the last 20 years, if I had the time
15 and the resources to do that with my staff, I think we
16 would keep lots of kids in school too. And I think we
17 could help those teachers help those kids view British
18 literature and science and math in a way that did
19 interest them.

20 So that's how I guess I would use that
21 to keep kids -- use that resource to keep kids in
22 school.

23 Q. What about performance going up. How does
24 that relate to additional funding?

25 A. Well, from third grade on, our kids spend an

1 awful lot of time copying down. We spend a lot of time
2 in the classroom copying down things that the teacher
3 puts in front of them because we can't afford the
4 consumables to be able to hand them something already
5 printed up and put it in front of them they could just
6 work off of and then -- well, it's consumable because
7 you ditch it after you're done with it.

8 You know, so we have to really make that
9 decision about where do we balance that. Where is
10 it -- you know, where do we spend our money. Do we --
11 do we put that newer, I guess more up-to-date resource
12 in front of the teacher, right, to be able to use with
13 the kids, or do we not do that and do we buy the
14 workbooks for the kids.

15 So those are the kinds -- when we talk
16 about triage, those are the kinds of triage decisions
17 that we have to make as a school district because
18 there's not enough funding to do everything that's
19 required to do and the things that we really feel like
20 would improve our students and our student learning.

21 You know, I guess we talked about our
22 microscopes. You know we pull them out to tell kids
23 what microscopes used to look like. You know, it's a
24 history lesson instead of a science lesson. It's, you
25 know, it's embarrassing actually.

1 Q. So do you not have microscopes now?

2 A. No, we have microscopes, but, like I said,
3 some of them are from the '50s.

4 Q. '50s

5 A. Yeah. They're -- and, you know, they're --
6 and the thing is, microscopes, have you priced them
7 lately? They're extremely expensive.

8 Q. What, if anything, do you have, though, to
9 quantify the notion that better teaching equates to
10 better learning? In other words, if you had these
11 resources --

12 A. Right.

13 Q. -- newer microscopes, better textbooks, how
14 do you know, if you know, that that's going to
15 translate into better performance?

16 A. Well, I know that when we -- I know that the
17 training has to be part of that for the teachers.
18 Poorly using great equipment is still poorly using
19 great equipment.

20 Q. Sure.

21 A. But when you put really good, modern
22 equipment in front -- and the resources that teacher
23 needs in front -- with a great teacher in front of
24 kids -- I mean, I've seen that happen. On a levy when
25 we have resources, when we pass a levy and we have

1 resources, and we put those in front of our kids, it's
2 a marked difference in the scores for the classrooms
3 with the good teachers we have. I mean, we've seen
4 that happen.

5 Q. You mentioned that you have some technology
6 that's paid for by levy and also by a Gates grant but
7 the kids are buying their own material for projects.
8 We discussed some of the projects.

9 A. Well, in our -- in our wood shop, for
10 example, or metal shop, it's not legal for us to give
11 away -- it's a gift of public funds if we give a coffee
12 table to a student. We can't give away a coffee table
13 that we purchased for a student, so the student has to
14 purchase the materials, or somebody purchase --
15 typically somebody purchases them for the students, you
16 know -- it's not the school district but it's usually a
17 staff member or administrator or somebody. Then the
18 student learns how to build those things and do those
19 things in the class and then the student takes those
20 things with them when they leave.

21 So, that's the -- I think that's what I
22 was talking about when they --

23 Q. What if the student can't afford those
24 materials?

25 A. Well, often the student can't afford those

1 materials.

2 Q. So what do you do?

3 A. I buy them for him or the principal buys them
4 for him or teacher buys them or a guy downtown buys
5 them. You know, lumber mills donate some materials or,
6 you know, to figure out a way for that kid to be able
7 to build the project they want to, though.

8 Q. You described certain students, in
9 particular, you mentioned six students on the high
10 school football team who you felt would not have
11 graduated if that extracurricular activity had not been
12 available to them.

13 A. Right.

14 Q. My first question is what kind of students
15 were those? How were they performing?

16 A. How were they performing --

17 Q. How were they performing academically? How
18 did they perform academically, if you know?

19 A. Before we got a hold of them, after we got a
20 hold of them.

21 Q. After you got a hold of them.

22 A. Well, there were eight actually on that team
23 that --

24 Q. There were eight?

25 A. There were eight. And --

1 Q. I'm sorry. Yes, eight.

2 A. I would say that three of them barely
3 graduated anyway. Probably I would say two of them
4 are -- did fairly well and are, you know, pretty
5 successful in town, you know, working and doing -- and
6 three of them have graduated from college.

7 Can I add something to that?

8 Q. Sure.

9 A. Okay. I know this is a focus about
10 academics, right? But -- and the reason I get so
11 passionate about this is because it's bigger than just
12 academics because, you know, what I didn't mention is
13 that before I became the superintendent in Colville
14 School District, Colville School District had a policy
15 in place for its athletics about training rules. They
16 called it the death penalty.

17 The death penalty was if you got caught,
18 you know, breaking training rules, you were out for the
19 season. If you got caught again, you're out for the
20 year. If you got caught again, you were out forever.
21 You were done. You didn't play sports or be involved
22 in activities again.

23 When I became superintendent, the first
24 meeting I had with the board was I met with them and I
25 said, Are you aware, school board, that the last three

1 students in Colville to get the death penalty are
2 dead? Because as soon as they knew they had no reason,
3 they fell apart and -- and they weren't dead from
4 natural kinds of things or just freak accidents. This
5 was -- you know, it was because of lifestyle. Because
6 of what happened to them, there was nothing to keep
7 them going.

8 So, for me, it's much more than whether
9 they can read or write or do math. And I know it
10 sounds corny to most people, but it's a life and death
11 thing for lots of people out there. Well, and it's
12 personal on the fact that -- I know -- I know those
13 kids would not have graduated because I saw in them the
14 same things I saw in me. I wouldn't have graduated.
15 And, frankly, if I had not been involved in
16 extracurricular activities, you and I probably would
17 have met in a different courtroom under different
18 circumstances.

19 Q. A lot of what this case is about is the
20 constitutional requirements that Mr. Ahearne references
21 in --

22 A. Right.

23 Q. -- Exhibit 2 and the EALR's and House Bill
24 1209. And those goals may be a little amorphous, and
25 that's going to be my job to figure out exactly what

1 those goals are. But I sit up here in a very sort of
2 academic theoretical legalistic position. You're the
3 practitioner.

4 A. Right.

5 Q. You take those eight kids and have them not
6 just graduate but can you have them all succeed in
7 terms of meeting with you under those 1209 goals, the
8 EALR's. So, they're not -- you mentioned three of them
9 just barely graduated.

10 A. Right.

11 Q. And one of the questions here is about
12 resources. And the question is, can you put enough
13 resources, whatever that math is, and make everybody
14 succeed?

15 A. Can you make everybody succeed if you do
16 that?

17 Q. Well, I mean, you've brought a slice of real
18 life into my courtroom and that is that the reality is
19 is that kids come from different backgrounds. We all
20 know that, but you made it very real. Some kids are
21 more advantaged than others, and we're not just talking
22 economically or financially, but emotionally. The
23 difference between the Panorama kids and the kids who
24 do the CVA --

25 A. Right.

1 Q. -- is a good example of that. Some have
2 supportive parents.

3 A. Right.

4 Q. Some have no present parents.

5 A. Right.

6 Q. Can you take that hole pool of kids with such
7 different backgrounds, and not just in your school
8 district, and maybe you can't answer that, maybe your
9 knowledge is just for your school district, but I need
10 the answer for the entire state, and ensure that all
11 those kids meet a certain standard.

12 A. I'm sorry, but is the question can you do
13 that?

14 Q. Yes, that's the question. Can you do that?
15 Can you, as a superintendent, tell me that all of your
16 kids, including the ones you got to hang out on a
17 football team, the theater program --

18 A. Right.

19 Q. -- all those kids are going to meet those
20 EALR standards set out by the state?

21 A. Absolutely. All is all, and all of them can
22 do that. I mean, I guess I've seen kids come from an
23 unbelievably horrible place to be very successful. I
24 mean, I've gone -- I've personally gone from one two
25 percent of the population to the other two percent of

1 population, and, in my opinion, they really very
2 naturally bright -- I say things I shouldn't. I do
3 things I shouldn't. But because of the resources that
4 people provided me, I was able to do that.

5 And I just -- I think we don't have that
6 for all of our kids. We don't have that and you can't
7 count on it and you can't plan for it. So you're
8 asking me a hypothetical question about can all kids
9 meet this -- can all kids meet this standard if they
10 have the resources to do it. In my opinion, I think --
11 I think so, yes.

12 But I can't -- but I'm running a levy in
13 February. I don't know if it's going to pass, so I
14 don't know if I'm going to have those things next
15 fall. I have no clue about that. So I can't -- I
16 don't envy you. But I think that all kids can -- I
17 think all kids can meet those standards that have been
18 set. And I think all kids, all kids can end up being a
19 positive contributing member of their community, of
20 society and be part of democracy. And I think that all
21 kids, given the right help and resources, can be
22 successful in the workforce.

23 Q. Your school system, your district and, in
24 particular, high school, have been recognized for its
25 achievements.

1 A. Right.

2 Q. Why do you think that is? What do you think
3 you're doing that's working? And I'm not suggesting
4 that, like you said, it may be a C+, but if the average
5 is a D+, you're doing better than everybody else. So,
6 your high school apparently is recognized for its
7 achievements.

8 Is there something that you think you're
9 doing that's not being done elsewhere that's making it
10 successful?

11 A. Well, you know, I'm not in another school's
12 shoes. I'm not in other superintendent's shoes. The
13 last thing I would ever want to do is -- that irritates
14 me when somebody wants to come in and speak for my
15 school district. I'm not going to do it for somebody
16 else's school district.

17 But I would say that I am amazed that
18 people think 13 percent of your kids not graduating is
19 good. I think maybe that's the reason. Because, in
20 our school district, 13 percent of kids not graduating
21 is a horrible failure because we're not accepting
22 mediocrity. We're not -- we don't -- I don't accept
23 that. That's not okay. 55 percent of my kids not
24 meeting the science standard is horrendous. And it
25 frustrates me that -- and I understand the political --

1 I mean, I might be from the country but I'm not a
2 bumpkin. I know that it's politics, and it's, you
3 know, marketing. And, I mean, I do the same thing on
4 my website, you know. So I'm not going to blame other
5 people for that. But it really is frustrating when
6 somebody says you're a blue ribbon school. You're, you
7 know -- you know, this great -- your high school's this
8 great school and 55 percent of our kids didn't meet.
9 That irritates me.

10 And Ms. Bashaw mentioned that we're a
11 bronze medalist. Hate to tell you, but that's third
12 place. I mean, have you ever seen anybody that --
13 third place jumping up and down, you know, yea? You
14 know, that's the kind -- but that's the kind of mindset
15 that's out there is that that's okay, and that's not
16 okay.

17 You know, one percent of your kids not
18 graduating is not okay. And we have to do everything
19 that we can do to make sure that it's zero percent,
20 and, if we don't, we're not doing our job.

21 Q. Do your kids really make hunting knives in
22 school?

23 A. Yes, and they're gorgeous. They're
24 gorgeous. Yes.

25 Q. You don't have a weapons policy or anything

1 like that?

2 A. Hunting knives are not weapons, sir. They're
3 tools.

4 Q. I guess that's the difference between a rural
5 school district and the city we're in.

6 A. Could be one of the differences, yes.

7 Q. I don't think you'll find many local
8 schools --

9 A. No, I know. Or a trapshooting team probably.

10 THE COURT: Thank you, Mr. Emmil.

11 THE WITNESS: Thank you.

12 THE COURT: Mr. Ahearne?

13 MR. AHEARNE: No questions, Your Honor.

14 THE COURT: Ms. Bashaw?

15 MS. BASHAW: I guess I just have one follow
16 up.

17 RECROSS-EXAMINATION

18 BY MS. BASHAW:

19 Q. You were being asked questions from the judge
20 about buying materials for the wood shop class. Do you
21 recall that?

22 A. Yes.

23 Q. And I just want to make sure, because I don't
24 think I asked you this, your school doesn't charge any
25 fees for students to participate in sports or to take

1 an arts or wood shop class, correct?

2 A. Some years we do. The years that we fail
3 levies and we don't have the money to have that kind of
4 thing, if we can make up enough of the difference by
5 fees, we will charge them. But, you know, we have a
6 pretty good understanding that even if we do charge
7 fees, somebody else is going to be flipping that bill
8 for those -- for those kids who can't afford it, so
9 we -- you know, it's not something we can count on and
10 say, well, if you charge fees for this class, we'll be
11 able to pay for it because that's typically not going
12 to happen.

13 Q. Last year you didn't charge any fees.

14 A. We had a full levy last year. We didn't
15 charge any fees, correct.

16 MS. BASHAW: Thank you. Nothing further,
17 Your Honor.

18 THE COURT: I actually had a couple more
19 questions. Sorry.

20 EXAMINATION

21 BY THE COURT:

22 Q. You talked about two differentials on the --
23 on the teachers and some are the regular teachers, the
24 state teachers, if you will, and some of these special
25 program or specially funded teachers.

1 A. Right.

2 Q. And those tend to be the newer, less
3 experienced teachers.

4 A. Right. Well, you'd probably ask just about
5 any superintendent in the state and they would tell you
6 that as soon as a teacher's in a district long enough
7 to have the seniority that it takes to get away from
8 lab, SNF, and regular -- they will because it's a
9 paperwork nightmare and it's a real frustrating kind of
10 position because it's education a lot of times through
11 legislation, because it's so monitored and so directed
12 about what you can do, when you can do it, how you can
13 do it, and teachers, frankly, you know, want to be
14 professionals, so they get out as soon as they can.

15 Q. Do you have any AmeriCorps or Vista
16 volunteers?

17 A. We do, but that's a difficult -- with labor
18 laws, that's a difficult thing to do because you have
19 to be careful about what they're doing. If it's
20 anything close to what folks in the bargaining unit are
21 doing, it's skimming and you can't do that.

22 Q. The story you told about the special ed
23 student from California --

24 A. Right.

25 Q. -- who was in a residential treatment center

1 and the father moved to Colville.

2 Did that actually happen?

3 A. Yeah, that was about four years ago that
4 happened.

5 Q. And did the Colville School District end up
6 picking up that tab in California?

7 A. We did for a year, and we had a long
8 conversation with the father about the -- about the
9 negative impact it was having on the rest of our
10 program and he moved back to northern California.

11 Q. Did the school district pay to move him back
12 there?

13 A. No. No. No. We didn't do that. But it did
14 make me think a little bit about that, but --

15 Q. Does the Attorney General -- is that your
16 attorney? Does the school district have its counsel
17 with the Attorney General's Office?

18 A. No. No, we have -- technically our attorney
19 is our local Stevens County Prosecuting Attorney.

20 Q. Okay.

21 A. But they're never -- you know, they don't
22 have time, so we have a private company out of Spokane,
23 Stevens Clay & Manix. That is our -- that are our
24 attorneys and --

25 Q. All right. That situation you described

1 sounded very unusual, to say the least, with the
2 California father moving up here.

3 A. Well, even if -- it's a matter of residence
4 is what happens. It's a matter of -- if a person
5 lives -- a student's permanent residence is within your
6 school district, you're responsible -- frankly, you're
7 responsible for everything. I think the state -- no,
8 national Supreme Court decision was your responsible
9 for everything except for that for which a surgeon can
10 supply.

11 So as a school district, from birth to
12 21, I'm responsible to cover everything except
13 surgery. So, catheters for kids, you know, if you have
14 a student who's a quadriplegic in bed all day, every
15 day, I'm responsible for through the school hours
16 anyway, having a nurse with that student, having a --
17 giving the medication. I mean, you know, that's --
18 that's the responsibility.

19 People think the responsibility of the
20 school district is reading, writing, arithmetic. It's
21 not even close to that. It's all those things.

22 So if they live within your school
23 district, they are your responsibility. And when a
24 person moves into your school district, their kids are
25 -- that's their residence. It's doesn't seem --

1 doesn't seem right, but -- I mean, some school
2 districts had to take care of that expense.

3 THE COURT: Thank you.

4 THE WITNESS: Yes.

5 THE COURT: Mr. Ahearne?

6 MR. AHEARNE: No questions, Your Honor.

7 THE COURT: Ms. Bashaw?

8 MS. BASHAW: Nothing, Your Honor.

9 THE COURT: Are you asking this witness to be
10 excused?

11 MR. AHEARNE: I'm sorry, Your Honor. Yes.

12 THE COURT: Any objection, Ms. Bashaw?

13 MS. BASHAW: No, Your Honor.

14 THE COURT: Mr. Emmil --

15 THE WITNESS: It's for real this time?

16 THE COURT: This is for real this time.

17 THE WITNESS: Okay.

18 THE COURT: Hope you have a good trip back to
19 the east side.

20 THE WITNESS: Okay. Thank you very much.

21 THE COURT: You're welcome.

22 THE WITNESS: Good luck.

23 THE COURT: Good luck to you, too. Take
24 care.

25 THE WITNESS: Yep.

1 THE COURT: Why don't we take our recess at
2 this time.

3 Who's your next witness, Mr. Ahearne?

4 MR. ROBB: Judy Billings.

5 THE COURT: Oh, okay. Why don't we take --
6 if you don't mind, we'll take Dr. Billings after the
7 afternoon recess. We'll begin at 2:50.

8 MR. AHEARNE: Thank you, Your Honor.

9 MR. ROBB: Thank you, Your Honor.

10 THE COURT: Court will be at recess.

11 (Whereupon a recess was taken and there was a
12 change in court reporters.)

13 --oOo--

14

15

16

17

18

19

20

21

22

23

24

25

